



August 20, 2002

Mr. Brian L. Reade
Attorney at Law
1014 Caspian Lane
Houston, Texas 77090-2512

OR2002-4619

Dear Mr. Reade:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167388.

The Woodlands Community Association (the "association"), which you represent, received a request for complaints of deed restriction violations made against a particular property by certain individuals or residents. You claim that the requested information is not "public information" for purposes of the Public Information Act ("the Act"), or that alternatively, this information is excepted from disclosure under section 552.101 of the Government Code. An attorney for the requestor has submitted arguments regarding why the information should be released. *See* Gov't Code § 552.304 (permitting member of the public to submit to attorney general reasons why requested information should or should not be released). We have considered the exception you claim and the arguments on behalf of the requestor, and have reviewed the submitted information.

We will first address whether the submitted information is considered public information. Section 552.0036 of the Act states:

A property owners' association is subject to [the Act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million

or more or in a county adjacent to a county with a population of 2.8 million or more;

(2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

A private property owners' association is subject to the Act only if it meets all three of the above-enumerated requirements. You have provided for our review the "Covenants, Restrictions, Easements, Charges and Liens" for the association. It appears, and you do not dispute, that the association meets the above-enumerated items (1), (2), and (3). You argue the association is not subject to the Act, however, because House Bill 3407, which has been codified at section 552.0036, is invalid. *See* Acts 1999, 76th Leg., R.S., ch. 1084, §2, 1999. You offer no support for your position and, therefore, we have no basis on which to conclude that this provision is invalid. Thus, we find that the association is subject to the Act pursuant to section 552.0036 of the Government Code.

You claim that the information you seek to withhold is excepted under section 552.101 in conjunction with the common-law informer's privilege. However, the materials submitted by the requestor's attorney reflect that the association received a previous request dated April 27, 2002 from the same requestor, which sought the identical information that is at issue here except that the requestor did not name any individuals in the previous request. In response to the first request, you sent the requested information to the requestor with the identities of complainants redacted. With respect to this earlier request, we note that section 552.301 of the Government Code prescribes procedures that a governmental body must follow when it believes that requested information may be withheld from the public. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The association failed to request a decision from this office regarding the previous request for information within the ten business day period mandated by section 552.301(a) of the Government Code. Because a request for a decision was not timely received, the information responsive to the April 27 request, which is also responsive to the instant request, is presumed to be public information. Gov't Code § 552.302. In order to overcome the

presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you claim that the requested information is excepted under the common-law informer's privilege. However, the informer's privilege does not constitute a compelling reason to overcome the presumption of openness. See Open Records Decision No. 549 at 6 (1990) (governmental body may waive informer's privilege). Therefore, you may not withhold any information pursuant to the informer's privilege, and the requested information must be released in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 167388

Enc. Submitted documents

c: Ms. Kristin Bays
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(w/o enclosures)